

# UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In The Matter Of:	)	<b>EB</b> Docket No. 02-21
	)	
PENINSULA COMMUNICATIONS, INC.)	)	File No. <b>EB</b> 01-IH-0609
	)	FRN: 0001-5172-15
Licensee of stations	)	
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152
KXBA(FM), Nikiski, Alaska;	)	86717
KWW-FM, Holmer, Alaska; and	)	52145
KPEN-FM, Soldotna, Alaska	)	52149
	)	
Licensee of FM translator	)	
stations	)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Steward,	)	52158 and 52160
Alaska	)	
	)	
Former licensee of FM	)	
translator stations	)	
K285EF, Kenai, Alaska;	)	
K283AB, Kenai/Soldotna,	)	
Alaska;	)	
K257DB, Anchor Point, Alaska;	)	
K265CK, Kachemak City,	)	
Alaska;	)	
K272CN, Homer Alaska; and	)	
K274AB and K285AA, Kodiak,	)	
Alaska	)	

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## HERITAGE REPORTING CORPORATION

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1220 L Street, N.W., Suite 600  
Washington, D.C. 20005-4018  
(202) 628-4888  
hrc@concentric.net

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In The Matter Of:	)	EB Docket No. 02-21
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K272CN, Homer Alaska; and	)	
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Alaska	)	

Room TWA 363  
Federal Communications  
Commission  
445 12th Street, S.W.  
Washington, D.C.

Tuesday,  
September 24, 2002

The parties met, pursuant to the notice of the  
Commission, at 9:00 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL  
Judge

Heritage Reporting Corporation  
(202) 628-4888

## APPEARANCES:

On behalf of Peninsula Communications:

JEFFREY D. SOUTHMAYD, Esquire  
Southmayd & Miller  
1220 Nineteenth Street, N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 331-4100

On behalf of Federal Communications Commission:

JAMES W. SHOOK, Esquire  
JUDY A. LANCASTER, Esquire  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(202) 418-1420/418-7584

## I N D E X

VOIR

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
David Becker	73	91	--	--	--

Hearing Began:	9:00 a.m.	Hearing Ended:	5:00 p.m.
Recess Began:	12:30 p.m.	Recess Ended:	1:45 p.m.

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>PCI:</u>			
1	74	90	
<u>EB:</u>			
26	236	246	
27	245	246	

## P R O C E E D I N G S

(9:00 a.m.)

JUDGE SIPPEL: We're on the record. This is an order to show cause. It's in the matter of Peninsula Communications, Inc., EB and Docket Number 02-21. It's the first day of the hearings. I'd like to ask counsel to introduce themselves for the record, please, first on behalf of Peninsula Communications, Inc.

MR. SOUTHMAYD: Good morning, Your Honor. I'm Jeffrey D. Southmayd, Southmayd & Miller, on behalf of Peninsula Communications, Inc.

JUDGE SIPPEL: Is this your client with your at the table?

MR. SOUTHMAYD: Yes, sir.

JUDGE SIPPEL: Why don't you introduce him, then.

MR. SOUTHMAYD: Sitting with me and assisting me is Mr. David Becker who's the President of Peninsula Communications, Inc.

JUDGE SIPPEL: Thank you, and on behalf of the Enforcement Bureau?

MR. SHOOK: James Shook and Judy Lancaster.

JUDGE SIPPEL: Okay. What I'd like to do is, you know, we have, certainly the burdens of proof in the proceeding are with the Bureau, so the Bureau **is** going to go first. What I would like to do so that we're sure of

1 getting the witnesses on and off as soon as possible would  
2 be to take the testimony first

3 Of course since we're using frozen, written  
4 statements, the witness would sponsor their own testimony  
5 and that would come in as a marked exhibit, but the  
6 documents themselves I would rather if it's okay, unless  
7 there's a reason why they have to be in the record for  
8 purposes of cross-examination or something, but I prefer to  
9 get to those after we finish the witnesses, at least a  
10 minimum of Bureau witnesses.

11 That way they get on the stand and get off the  
12 stand and they're out of town. Any problem with that? Mr.  
13 Southmayd?

14 MR. SOUTHMAYD: I have a question, Your Honor.  
15 You're referring to the, what are essentially the Bureau's  
16 various requests for official notice and --

17 JUDGE SIPPEL: Yes, sir.

18 MR. SOUTHMAYD: -- documents?

19 JUDGE SIPPEL: Yes, sir.

20 MR. SOUTHMAYD: No, I don't have a problem with  
21 that.

22 JUDGE SIPPEL: Okay. What do you think, Mr.  
23 Shook?

24 MR. SHOOK: Well, Your Honor, with respect to at  
25 least some *of* the exhibits, perhaps most and conceivably

all, they are going to be referenced during the examination  
2 of Mr. Becker, and we could --

3 JUDGE SIPPEL: Yeah, go ahead. I'll let you  
4 finish, but I'm thinking of it, but we might do it that way  
5 for Mr. Becker, but as far as your witnesses are concerned,  
6 can we just get them on the stand and get them off the  
7 stand?

8 MR. SHOOK: Certainly.

9 JUDGE SIPPEL: Okay.

10 MR. SHOOK: I mean we're talking about the four  
11 other individuals?

12 JUDGE SIPPEL: Yes, sir. Yes. Since your case  
13 goes first and I'm assuming that you're going to start with  
14 these witnesses, rather than have them sit here while we go  
15 through the, you know, the exhaustive process of putting  
16 these things on the record, your documents in the record.

17 MR. SHOOK: Your Honor, our preference was to  
18 start with Mr. Becker.

19 JUDGE SIPPEL: You want to use Mr., you want to **go**  
20 with Mr. Becker before?

21 MR. SHOOK: Yes, sir.

22 JUDGE SIPPEL: **All** right.

23 MR. SOUTHMAYD: If I could be heard.

24 JUDGE SIPPEL: Yeah, sure.

25 MR. SOUTHMAYD: We were under the impression that



1 because the burden of moving forward was on the Commission  
2 that they would present their evidence at the beginning of  
3 this hearing and to that extent, it seems to me they're  
4 first up. Our preference is clearly for them to begin.

5 I have no problem with them getting their  
6 witnesses on and off and then taking Mr. Becker after that  
7 and then going to their exhibits, but I think, you know, the  
8 burden is on them to proceed. They ought to be starting  
9 here.

10 JUDGE SIPPEL: Well they will start. What I'm  
11 concerned about, how many witnesses? You have four  
12 witnesses that you've indicated are going to testify on  
13 behalf of the Bureau.

14 MR. SHOOK: Right, two of whom are here.

15 JUDGE SIPPEL: They're from out of town?

16 MR. SHOOK: Yes, sir.

17 JUDGE SIPPEL: Where are the other two?

18 MR. SHOOK: Excuse me?

19 JUDGE SIPPEL: Where are the other two?

20 MR. SHOOK: The other two are going to be coming  
21 in tomorrow.

22 JUDGE SIPPEL: Okay, well why don't we do this.  
23 Why don't we get the two on the stand, get them off and get  
24 them out of here and then we can turn to the documents and  
25 Mr. Becker?

1 MR. SOUTHMAYD: That's fine with me, Your Honor.

2 MR. SHOOK: *Your* Honor, I just thought in terms of  
3 the orderly presentation of our case, since we had indicated  
4 in our direct case submission that we were calling Mr.  
5 Becker as an adverse witness, just to lay out what was going  
6 on, we wanted to put him on the stand first.

7 JUDGE SIPPEL: Well I can understand what's  
8 happening. What I'm concerned about is the time it's going  
9 to take to put these exhibits on, take Mr., put Mr. Becker  
10 on the stand and go through his testimony and have two  
11 witnesses who are from out of town sitting around waiting,  
12 it doesn't make any sense.

13 MR. SHOOK: Well Your Honor, at least from that  
14 standpoint, that's not a burden on them because they had  
15 planned to be here. They are visiting family in addition to  
16 being here as witnesses, so it turns out that that's not the  
17 kind of burden that you might have anticipated being.

18 JUDGE SIPPEL: All right. As long as they  
19 understand that I'm representing their interests in trying  
20 to accommodate them as best *as* I possibly can -- it's your  
21 case. Present it as you see fit. We will do it your way.  
22 All right. Then, is there going to be any requirement for  
23 these witnesses to be sequestered?

24 MR. SOUTHMAYD: We would like the witnesses  
25 sequestered, Your Honor.

1 JUDGE SIPPEL: Okay.

2 MR. SHOOK: Your Honor, we would request that Mr.  
3 Davis be allowed to stay with us as a consultant.

4 JUDGE SIPPEL: Is he going to testify?

5 MR. SHOOK: Yes, sir.

6 JUDGE SIPPEL: Well he's not going to stay in the  
7 courtroom. No. So if you want to, we'll take a, we'll take  
8 a short recess. You want to escort these witnesses of yours  
9 to the witness room where they can wait until we are  
10 concluded with Mr. Becker, that's fine.

11 MR. SOUTHMAYD: Could I ask a question? As I  
12 understand it, Mr. Becker is being called first as their, as  
13 an adverse witness.

14 JUDGE SIPPEL: That's correct.

15 MR. SOUTHMAYD: So do I understand the procedure  
16 to be, counsel for the Bureau calls **Mr.** Becker as an adverse  
17 witness and asks him whatever appropriate adverse witness  
18 questions he has, then Mr. Becker's finished, then we move  
19 with the Alaska witnesses and then after that, Mr. Becker  
20 will return to the stand in support of our direct case  
21 testimony?

22 JUDGE SIPPEL: That would be my understanding.

23 MR. SOUTHMAYD: Thank you.

24 JUDGE SIPPEL: So he came back, yeah, he will go  
25 right back on again and testify at length in terms of your

1 case in chief.

2 MR. SOUTHMAYD: Thank you.

3 JUDGE SIPPEL: However you may care to present  
4 that.

5 MR. SHOOK: Just a point of clarification, then.  
6 Would it be at the point in time in which Mr. Becker returns  
7 to the stand that if we had any objections about his direct  
8 testimony that we would make them at that point?

9 JUDGE SIPPEL: Well yeah, if you're not sponsoring  
10 his direct testimony. You're calling him as an adverse  
11 witness --

12 MR. SHOOK: Yes, sir

13 JUDGE SIPPEL: -- with all that that might entail,  
14 and you're not going to put his testimony in.

15 MR. SHOOK: Well let me put it this way. I will  
16 make reference to it, but there are portions of it that I  
17 believe to be objectionable. It's a question of when I  
18 would make those objections.

19 JUDGE SIPPEL: Well I would --

20 MR. SOUTHMAYD: Your Honor?

21 JUDGE SIPPEL: Yeah. Go ahead.

22 MR. SOUTHMAYD: **If** part of their examination of  
23 Mr. Becker as an adverse witness is premised on his direct  
24 testimony, which is what it sounds like, then their argument  
25 for beginning with him makes no sense. It sounds like their

desire to cross-examine him is connected in part and parcel  
2 with his direct case and more appropriately done when we  
3 present our direct case which should be after their case,  
4 since they have the burden of proceeding.

5 Bifurcating his testimony just doesn't seem to  
6 make any sense to me.

7 JUDGE SIPPEL: Well if you all haven't worked this  
8 out ahead of time, I'm not going to get into it now. The  
9 Bureau's got a right to put on its case. There's a witness  
10 here in the courtroom they have called as a witness. If  
11 they want to have his testimony marked as an exhibit and  
12 cross-examine him on that, even though it's not admitted  
13 into evidence because I'm not going to sponsor it, I don't  
14 care. He can do it that way.

15 Would you want to, if they want to work out some  
16 kind of a deal with you where you'll put him on the stand  
17 and put his statement in the record, his testimony in the  
18 record and then they cross-examine him on that plus whatever  
19 else they want to do, that would be okay with me, too.

20 MR. SOUTHMAYD: Could I be heard, Your Honor?

21 JUDGE SIPPEL: Sure can.

22 MR. SOUTHMAYD: Then would it make sense to just  
23 go ahead, put Mr. Becker's direct case into the record and  
24 let them cross-examine him on that and be done with him in  
25 one fell swoop?

1 JUDGE SIPPEL: Well that's up to them. I don't  
2 know.

3 MR. SHOOK: That would be perfectly fine with us.

4 JUDGE SIPPEL: The understanding will be, then,  
5 that Mr. Becker will be put on the stand by Mr. Southmayd.  
6 You will have his testimony marked as an exhibit and ask him  
7 if he agrees to it, et cetera, et cetera. We will move that  
8 into evidence and I'm sure there will be some objections.

9 We'll get over the objections, but whatever form  
10 it is left in, it will get into the record, and then Mr.  
11 Becker is there to be cross-examined by the Bureau, and not  
12 only cross-examined on his testimony but also to be  
13 questioned as an adverse witness which may go beyond that.

14 I mean, all of this is subject to objections,  
15 relevancy, et cetera. Does that make sense?

16 MR. SHOOK: That makes sense.

17 MR. SOUTHMAYD: May I have a minute with Mr.  
18 Becker since we didn't expect him to go first this morning,  
19 a couple of minutes?

20 JUDGE SIPPEL: You all can have five minutes.

21 MR. SOUTHMAYD: Thank you.

22 JUDGE SIPPEL: Let's go off the record.

23 (Whereupon, a brief recess was taken.)

24 JUDGE SIPPEL: On the record. Everybody is here  
25 who --

1 MR. SHOOK: Two witnesses who have left

2 JUDGE SIPPEL: Thank you very much.

3 MS. LEIGHTON: And one visitor who is here.

4 JUDGE SIPPEL: Well I think it is the parties and  
5 counsel, but thank you, Ms. Leighton. Thank you. Everybody  
6 that's here is welcome and, including those that left,  
7 except for the sequestered witnesses. Now how do you want  
8 to proceed? Are you going to put Mr. Becker on now or have  
9 him identify his statement?

10 MR. SHOOK: That's fine, Your Honor. I thought  
11 I'd give an original and one copy of his testimony to the  
12 court reporter and Mr. Becker will have a copy I've  
13 identified.

14 JUDGE SIPPEL: Please come forward, sir.

15 Whereupon,

16 **DAVID BECKER**

17 having been duly sworn, was called as a witness  
18 and was examined and testified as follows:

19 JUDGE SIPPEL: Thank you, sir. Please be seated

20 MR. SOUTHMAYD: Your Honor, I'm Jeff Southmayd,  
21 counsel for Peninsula Communications and I'm going to hand  
22 the court reporter the original and a copy of the direct  
23 hearing testimony of Peninsula Communications, Inc. and Mr.  
24 Becker, the witness, has a witness of his testimony.

25 JUDGE SIPPEL: Thank you very much. I have a copy

1       that was furnished to me also

2                               DIRECT EXAMINATION

3               BY MR. SOUTHMAYD:

4           Q     Good morning, Mr. Becker.

5           A     Good morning.

6           Q     Have you reviewed the direct testimony that has  
7       been put into the record of this proceeding and that you  
8       have before you?

9           A     Yes.

10          Q     Is that your signature on the signature line at  
11       the end of your direct testimony narrative?

12          A     Yes.

13          Q     Very good. Your Honor, do you have any changes  
14       that you want to make to your testimony or corrections?

15          A     No.

16               JUDGE SIPPEL: Let's have it marked as an exhibit  
17       at this point.

18               MR. SOUTHMAYD: Your Honor, could I have it marked  
19       as PCI Exhibit 1.

20               JUDGE SIPPEL: That will be fine. Ms. Reporter,  
21       do you have this? Make that notation, **please**. Do you know  
22       the document he's referring to? Okay, that is going **to** be  
23       PCI Exhibit Number 1 for identification. Do you have a  
24       stamp or something to --

25               (Discussion off the record.)



1 JUDGE SIPPEL: Whatever you want to do. I'm not  
2 going to tell you how to do your job, just so it gets done.  
3 I'd suggest that you do the stamping in between breaks or  
4 something so you keep up with it. Now yes, sir. We have it  
5 marked for identification.

6 (The document referred to was  
7 marked for identification as  
8 PCI Exhibit No. 1.)

9 MR. SOUTHMAYD: The witness is available for  
10 cross-examination.

11 JUDGE SIPPEL: Do you want to try and move it into  
12 evidence before?

13 MR. SOUTHMAYD: Oh, yes. Thank you, Your Honor.  
14 I'd like to move it into evidence.

15 JUDGE SIPPEL: Are there going to be objections?

16 MR. SHOOK: To parts of it, yes, sir.

17 JUDGE SIPPEL: What I'd sooner do is have it  
18 received in evidence and then rule on the objections as they  
19 come up. Would that be all right with you? I think it  
20 might save some time.

21 MR. SHOOK: Well, Your Honor, I believe what I  
22 want to object to is relatively discrete.

23 JUDGE SIPPEL: Fine. Let's do it that way, then.  
24 So this will be before I rule on your motion.

25 MR. SHOOK: Yes, sir.

1 JUDGE SIPPEL: You may proceed, Mr. Shook.

2 MR. SHOOK: Your Honor, I'd like you to focus on  
3 the first page. We have no difficulty with the first  
4 paragraph. With respect to the second paragraph, we are  
5 also okay with the first sentence, but beginning with the  
6 second sentence and continuing to the second page,  
7 concluding with PCI will be working to get this amendment  
8 passed in the next session of Congress, we object that that  
9 material is irrelevant.

10 JUDGE SIPPEL: Okay. Mr. Southmayd?

11 MR. SOUTHMAYD: Your Honor, the basis of our case,  
12 one of the bases of our case, is the clear ambiguity in the  
13 law in which my client has been caught and as a result we  
14 are here today. This goes to his state of mind and his  
15 efforts to clear up that ambiguity so that others who follow  
16 him don't fall into the same trap, and I think it's relevant  
17 to the extent that it shows his state of mind in attempting  
18 to rectify the situation that has resulted in him being here  
19 today.

20 MR. SHOOK: Your Honor, we believe that this  
21 concerns an effort that perhaps hasn't even begun yet and  
22 certainly doesn't have anything to do with the continued  
23 operation of the stations.

24 JUDGE SIPPEL: Well he can testify. You wouldn't  
25 have any objection to him testifying in a general way, would

1     you, that he's contacted his congressman to try and get  
2     legislative relief on this issue?

3             MR. SHOOK: Your Honor, I just, I fail to see how  
4     that ties in with his state of mind relative to the  
5     operation of those stations.

6             JUDGE SIPPEL: I'm going to sustain the objection  
7     insofar as the specific language has been identified by  
8     counsel. It is not directly relevant to the case and it  
9     gives too much detail that I would find either burdensome  
10    for the record or could possibly, possibly lead to -- well  
11    let me just leave it with that, that it's unnecessarily  
12    burdening the record. However, I will permit the witness  
13    over Mr. Shook's objection to be asked and answer the  
14    questions essentially as I have framed it, and it would go  
15    to the same, to, again, his overall frame of mind.

16            So I think I've abstained your, sustained your  
17    objection, Mr. Shook, and that material will be stricken.

18            MR. SHOOK: Your Honor, our next objection would  
19    appear on page 3. It's about halfway through the first  
20    paragraph. The sentence that I find objectionable reads,  
21    "My reputation for such personal -- my community for the  
22    past 30 years." I don't believe that this witness is  
23    competent to testify about his own reputation.

24            JUDGE SIPPEL: Mr. Southmayd?

25            MR. SOUTHMAYD: Your Honor, certainly he is

competent to testify as to his perception of his reputation  
2 in the community and that of course would be subject to  
3 rebuttal evidence submitted by the Bureau should they decide  
4 to do so. I think it also goes to just basic background of  
5 the witness as where he was born, when he was born, his  
6 education and his longevity in the broadcast business.

7 JUDGE SIPPEL: Mr. Shook --

8 MR. SHOOK: Your Honor, if something is referenced  
9 in terms of Mr. Becker's understanding, that's one thing,  
10 but the way the sentence reads, it's asserted as a matter of  
11 fact relative to what his reputation is. I just don't think  
12 Mr. Becker is competent to testify relative to his own  
13 reputation.

14 JUDGE SIPPEL: Well I'm not so sure about the  
15 competence argument, but it is, it's a self-serving  
16 statement that doesn't really, that would have minimal  
17 weight. What I'm going to do is leave it in as a self-  
18 serving statement that has minimal weight.

19 I wouldn't bother trying, I would not permit a  
20 witness, you to bring a witness in to contradict it because  
21 I don't that it has that much significance as evidence in  
22 this case.

23 MR. SHOOK: Your Honor, our next objection is on  
24 page 4. It's in the second paragraph under the heading,  
25 "the 1980's Rangel Radio Group Translator Era". The portion

1     that we find objectionable appears in the middle of that  
2     paragraph, beginning with the clause "Noting that the  
3     translator would not have been permitted to operate," et  
4     cetera, through the next, the next sentence, and the reason  
5     for that objection is a hearsay --

6             JUDGE SIPPEL: All right. Okay, just a second. I  
7     didn't mean to interrupt. I see, I see where you are now.  
8     You're up above the bold, you're not in the bold-faced  
9     paragraph here, it's the middle paragraph, right? And it's  
10    after KQOK-FM Translator comma --

11            MR. SHOOK: Correct.

12            JUDGE SIPPEL: Noting --

13            MR. SHOOK: Correct.

14            JUDGE SIPPEL: And you want to start with noting  
15    and where do you go with this?

16            MR. SHOOK: Through the next sentence. Your  
17    Honor, that's --

18            JUDGE SIPPEL: Through the furthermore sentence.

19            MR. SHOOK: Yes, sir. We'd have no objection  
20    whatsoever if the pleading itself were produced. I just, I  
21    don't think it's appropriate to take this characterization  
22    without the pleading itself being here. Otherwise we're  
23    looking at a hearsay objection.

24            MR. SOUTHMAYD: Well, Your Honor, the pleading may  
25    not be here, but the underlying order **is**. It's the Bureau's

1 own exhibit where these factors are specifically noted, and  
2 I don't understand the objection. Actually I stand  
3 corrected on that. The decision that this refers to is  
4 included as one *of* our exhibits.

5 JUDGE SIPPEL: Oh.

6 MR. SHOOK: It's also an official notice exhibit  
7 as well, and we certainly have no problem referencing the  
8 order. I just feel uncomfortable referencing the pleading  
9 without the pleading itself being here.

10 JUDGE SIPPEL: Let me see if I'm clear on that.  
11 What is being stated here as far as that, noting that the  
12 translator is, when you say it's in the petition, and that  
13 petition is not anyplace in the record? Is that right, Mr.  
14 Southmayd? It's not in the record either as an exhibit for  
15 you or one of their --

16 MR. SOUTHMAYD: No, Your Honor.

17 MR. SHOOK: And as I said, I have no objection to  
18 the pleading itself being produced and made a part of the  
19 record, but as matters stand, I do not want this material in  
20 there without the pleading itself.

21 MR. SOUTHMAYD: Well, as I indicated, our PCI  
22 Exhibit 1A1 is the Commission's order, and it discusses  
23 placing that initial file this argument. I mean, they're in  
24 that exhibit.

25 JUDGE SIPPEL: I mean, counsel's right. I mean,

1 if it runs the risk of mischaracterizing what's in the  
2 petition, I will permit this to stay the way it is as the  
3 witnesses take reviews on the petition, but the petition has  
4 to come in --

5 MR. SOUTHMAYD: I don't think we'll put the  
6 pleading in since the order describing the pleading --

7 JUDGE SIPPEL: Then I'm going to take that  
8 language out. I'm going to sustain the objection.

9 MR. SOUTHMAYD: Excuse me, Your Honor. How far  
10 does that go?

11 JUDGE SIPPEL: It's in the middle of the middle  
12 paragraph, after the word "translator -- noting," okay? And  
13 then you go down one, two, three, four, five, six, seven,  
14 eight and **it** ends with the word "granted". Did I get that  
15 right?

16 MR. SHOOK: Actually no, sir. It's the, ends with  
17 the sentence that begins with "furthermore" and concludes  
18 with "KGTL". The next sentence references a Commission rule  
19 and that's what's being quoted, and I don't have an  
20 objection to that.

21 THE COURT: Well where do you want, where do you  
22 want to end this?

23 MR. SHOOK: Beginning with the word --

24 JUDGE SIPPEL: Oh, I see. I'm sorry, "KGTL-FM  
25 period"?

1 MR. SHOOK: Yes, sir.

2 JUDGE SIPPEL: That's where it ends. I've given  
3 you more

4 MR. SHOOK: More than what I asked for.

5 JUDGE SIPPEL: More than what you asked for. Do  
6 you follow me on that, Mr. Southmayd?

7 MR. SOUTHMAYD: Yes, sir, thank you.

8 JUDGE SIPPEL: Okay, then I'm going to strike that  
9 and order the court reporter to strike that from the  
10 exhibit, that language. Okay, is that it?

11 MR. SHOOK: No, sir, page 5, the third paragraph.

12 JUDGE SIPPEL: The one that starts "next PCI"?

13 MR. SHOOK: Yes, sir. The middle of the  
14 paragraph, the sentence begins "The Commission approves the  
15 translator for KGTL-FM licensed to Kodiak and owned by the  
16 Kodiak Community Church." That sentence is fine. The next  
17 sentence -- now this is where I have a problem.

18 It's that portion that I find objectionable  
19 because the testimony is referencing something about what  
20 the church wants or what the church believed, or what, it  
21 had to do with the church's state of mind.

22 JUDGE SIPPEL: All right. Mr. Southmayd?

23 MR. SOUTHMAYD: would it be appropriate on voir  
24 dire to ask Mr. Becker what his basis is for that assertion?

25 JUDGE SIPPEL: Yeah.



1 BY MR. SOUTHMAYD:

2 Q Mr. Becker, what's the basis of that assertion?

3 A Well the church indicated that they had a  
4 difficulty in sustaining operation of the translator --  
5 expense of it, and we desired to keep the service in Kodiak,  
6 so we -- to keep it on the air.

7 JUDGE SIPPEL: And so he's giving the  
8 circumstances -- he was inclined to purchase the station.

9 MR. SHOOK: Your Honor, the only difficulty with  
10 that is not the second aspect of it, but they indicated, it  
11 strikes me that that's a hearsay problem.

12 JUDGE SIPPEL: Okay. I will sustain the  
13 objection, but I'm going to let the witness be allowed to  
14 explain the circumstances of that assertion. -- hearsay  
15 testimony, but the circumstances of the purchase can be  
16 testified to, and I'm sure that that can be cleared up. I  
17 would view that as a minor hearsay violation, but that's  
18 still -- Say it again, Mr. Southmayd.

19 MR. SHOOK: Your Honor, moving on to page 8.

20 JUDGE SIPPEL: Are you with **us**, madame reporter?  
21 Do you see exactly the lines we're talking about? Okay.  
22 You are having difficulty. All right. As long as -- It's  
23 on the transcript, though, right? You're getting **all** this  
24 down on the tape. Let's go off the record for a minute.

25 (Whereupon, a brief recess was taken.)

1 JUDGE SIPPET: We're on the record. We're on the  
2 record. All right. What I have done is I have, so that the  
3 record is clear on this, I have sustained the Bureau's  
4 objection from page 5 of Peninsula Exhibit 1 which is Mr.  
5 Becker's written testimony, and I've stricken the language  
6 in the second full paragraph starting with the words "After  
7 KCC, starting here, when it became evident that the church  
8 did not want to pay for the ongoing expenses of operating  
9 the translator and PCI desired to maintain the service to  
10 Kodiak." That language is stricken. All right, Mr.  
11 Southmayd? I'm sorry, Mr. Shook? Any other objections?

12 MR. SHOOK: On page 8, the middle of the second  
13 paragraph, a sentence reads, "Little did we both anticipate  
14 the major obstacles the FCC would put in the path to derail  
15 this sale." We would object to the use of the word "we".  
16 We certainly have no objection to the words, the use of the  
17 word "I".

18 JUDGE SIPPET: Let me see where you are. I'm  
19 having trouble finding this, This is with, the sentence,  
20 the paragraph begins, "However PCI"?

21 MR. SHOOK: Yes, sir.

22 JUDGE SIPPET: Down to the middle?

23 MR. SOUTHMAYD: The line that begins with the word  
24 "years".

25 JUDGE SIPPET: I see. All right. I see where you

1 are. And you're objecting to the use of the word "we" as  
2 opposed to the word "I".

3 MR. SHOOK: Yes, sir.

4 JUDGE SIPPEL: All right. Do you want to correct  
5 that, Mr. Southmayd? How do you want to handle that?

6 BY MR. SOUTHMAYD:

7 Q Mr. Becker, would you like to correct that?

8 A I can correct that.

9 MR. SHOOK: Actually it would have to be we both  
10 would be excised and then the word I would be inserted

11 JUDGE SIPPEL: Any objection?

12 MR. SOUTHMAYD: No, Your Honor.

13 JUDGE SIPPEL: That's the way it will be. So  
14 scratching "we both" and we're inserting the word, pronoun  
15 "I", meaning Mr. Becker.

16 MR. SHOOK: Your Honor, I did miss one a little  
17 bit earlier in the same paragraph. It appears in the third  
18 sentence, "due to changes in staff and the loss of  
19 Commission personnel"

20 JUDGE SIPPEL: Yes?

21 MR. SHOOK: I object to that as speculative.

22 JUDGE SIPPEL: Changes in staff. What does the  
23 staff relate to, Mr. Becker, the staff of the Commission or  
24 the staff of your operation?

25 THE WITNESS: The staff of the Commission.

1 JUDGE SIPPEL: I'm sorry, now what's the basis for  
2 the objection?

3 MR. SHOOK: Speculation.

4 JUDGE SIPPEL: Speculation. He doesn't know? Mr.  
5 Southmayd?

6 BY MR. SOUTHMAYD:

7 Q Mr. Becker, what's your basis for that assertion?

8 A Well the basis is the people that we dealt with in  
9 the '80s were no longer the people we were dealing with in  
10 the middle of '95.

11 Q Do you have specific people that you dealt with or  
12 were aware of?

13 A Well I was aware of the people that were assigned  
14 to translators. For example, Thomas English, who signed off  
15 on basically all of our permits, and it's my understanding  
16 he retired, so there's one person that was gone, and  
17 specifically he's the one that comes to mind.

18 MR. SOUTHMAYD: Well suppose it was just due to  
19 changes in staff, then, which he was personally aware of.

20 MR. SHOOK: Your Honor, I certainly don't have an  
21 objection to Mr. Becker identifying particular individuals  
22 that he worked with, but the way this sentence reads, I  
23 just, I don't understand how Mr. Becker could testify about  
24 what is happening with the Commission with respect to  
25 changes in staff and loss of personnel and what those

1 personnel have thought or encouraged or the various, the  
2 various actions are going to be on the record and then we  
3 can argue from those actions whatever significance they may  
4 have had.

5 JUDGE SIPPEL: Well, what I will do is I will  
6 strike the language "and the loss of Commission personnel"  
7 on the basis of your objection. I'm going to leave in "due  
8 to changes in staff" and the only, the weight accorded to  
9 that testimony is going to be based on what he specifically  
10 testifies to. He's got, for example, one has been Mr.  
11 English. I'll permit that Mr. Becker wants to flesh that  
12 out himself if you don't do it on cross-examination. I'll  
13 permit that. So it sort of got sustained in half on that  
14 one.

15 MR. SHOOK: Moving on to page 10.

16 JUDGE SIPPEL: Page 10. Okay.

17 MR. SHOOK: The last two sentences, the Bureau has  
18 the same objection that it had to the portion that it  
19 objected to in the very beginning about the efforts to be  
20 made with the Alaskan congressional delegation.

21 JUDGE SIPPEL: I will, so it will be, the language  
22 starting with this case certainly highlights down to the  
23 end? Is that where you're at, or where are you?

24 MR. SHOOK: No, I'm okay with "this case certainly  
25 highlights." That's Mr. Becker's --

1 JUDGE SIPPEL: Tell me where you start.

2 MR. SHOOK: -- opinion. Beginning with "PCI  
3 intends" Those last two sentences.

4 JUDGE SIPPEL: I don't want to cut you off on  
5 this, Mr. Southmayd, but my ruling is going to be the same  
6 as it was before. He can testify. You can ask him in a  
7 general way what he might be doing. You know, it's going to  
8 be very short, but this is just too burdensome for this  
9 particular record. It's too specific.

10 MR. SOUTHMAYD: Thank you, Your Honor.

11 JUDGE SIPPEL: So I'm sustaining that objection,  
12 too, subject to that condition. Is that it?

13 MR. SHOOK: Well, now I would move on to PCI  
14 Exhibit 1C which I imagine is incorporated into this exhibit  
15 and the first portion of that that I find objectionable  
16 appears on page 5.

17 JUDGE SIPPEL: Let me ask Mr. Southmayd, is he  
18 correct in that or am I correct in assuming that each of  
19 these exhibits is incorporated into the statement so that  
20 this statement is also considered to be under oath?

21 MR. SOUTHMAYD: Correct. Correct, Your Honor.

22 JUDGE SIPPEL: All right. **Go** ahead, Mr.  
23 Southmayd. What page did you say, Mr. Shook?

24 MR. SHOOK: Page 5 of PCI Exhibit 1C.

25 JUDGE SIPPEL: That's entitled Statement of David